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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re M.O., et al., Persons Coming Under the Juvenile Court Law.	B286776 (Los Angeles County Super. Ct. No. DK20869)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. D.O., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Robert S. Wada, Judge. Affirmed.

Konrad S. Lee, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine Miles, Assistant County Counsel, and Stephanie Jo Reagan, Principal Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Siblings M.O. and M.B. were 10 and eight years old, respectively, when they reported that their father, appellant D.O., sexually and physically abused them. After hearing the children's testimony in court, reviewing video recordings of their forensic interviews, and considering the reports submitted by respondent Department of Children and Family Services (DCFS), the juvenile court found the children credible and sustained jurisdictional findings that appellant sexually and physically abused them.

Appellant challenges the juvenile court's findings by pointing to inconsistencies in the children's testimony, issues with their credibility, and the absence of physical evidence establishing the abuse. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

I. General Background

The family consists of minor M.O. (born March 2006), his sister M.B. (born December 2008), their father, appellant D.O., and their mother, I.B. (Mother). Appellant and Mother were in a relationship from 2005 to 2008. The children resided with Mother, her husband (Brian), and Mother and Brian's infant daughter. Appellant resided with his parents (the children's paternal grandparents) and his brother, C.O. (Uncle). Appellant had a prior criminal history and had been arrested for vandalism, possession of a dangerous weapon, petty theft, assault with a deadly weapon, making criminal threats, and maintaining a public nuisance. Uncle had been arrested for having sex with a minor, and was a registered sex offender. There was no custody arrangement, but the children regularly visited the grandparents' home.

II. Detention Report

The family came to the attention of DCFS on October 3, 2016 through a referral from the child protection hotline, which indicated the children were being sexually abused by their father and uncle. A detention report, filed December 28, 2016, summarized interviews conducted by a social worker, police detective, and forensic psychologist.

A. Social Worker Horton's Interviews

Clinical social worker (CSW) Horton visited the family on October 7, 2016 to discuss the allegations. Mother explained that Brian had noticed the children acting inappropriately. Upon questioning M.O., Brian learned there was "penis touching" between M.O. and Uncle, and that M.O. and M.B. were "forced to do things to each other." Mother had believed the paternal grandmother (PGM) was watching the children closely during their visits.

Horton spoke to seven-year old M.B. M.B. stated she was afraid of Uncle because "'he did something to me,'" but denied being afraid of appellant. M.B. drew a stick figure on a piece of cardboard, and circled the lower portion of the stick figure to indicate where Uncle touched her. The touching occurred in the bathroom. Uncle had also licked her tongue with his tongue.

Ten-year-old M.O. indicated he was afraid of appellant and Uncle because "'they do nasty stuff,'" including "'touching, licking, and sucking.'" He reluctantly told Horton that appellant and Uncle "put their penises in his butt" and they also do it to his sister. He indicated the abuse happened every time they visited, and had started when he was in first grade. Uncle touched him in the hallway, and appellant touched him in the bathroom. Both appellant and Uncle had threatened that if M.O. told anyone, they would kill him and separate him from his family. M.O. also indicated that at least 10 more people had sexually abused him, including appellant's friends and his aunt's boyfriend and his friends.

B. Police Detective Garcia's Interviews

Detective Garcia from the Torrance Police Department spoke to the minors on the same day. Garcia stated that M.O. had initially disclosed that 15 people had sexually abused him, beginning when he was five years old, and had "'wiggled my penis until white stuff came out.'" Garcia told M.O. he did not entirely believe him, "primarily due to the fact that minor would not be able to ejaculate at age 5," and M.O. began crying. Later that night, Mother called Garcia to explain that M.O. had recanted his previous allegation, but maintained that appellant, Uncle, his aunt's boyfriend and the boyfriend's friend had sexually abused him. The next morning, Mother called

Garcia again to tell him that M.O. now maintained that only appellant sexually abused him.[1] According to Garcia, M.B. initially denied that anyone inappropriately touched her, but later confirmed the allegations, perhaps due to excessive questioning from Mother and Brian.

C. Forensic Psychologist Dr. Maltby's Interviews

On October 17, 2016, M.O. and M.B. were interviewed by Lauren Maltby, Ph.D., supervising forensic psychologist at KIDS Clinic-HUB/Harbor-UCLA Medical Center. M.O. disclosed that appellant sodomized him, describing his penis as "'bigger than mine, hairy and nasty.'" The abuse had been occurring since the first grade, and though it was painful and caused him bleeding in the beginning, now he "'rarely bleeds.'" He had "'red poop many times.'" Appellant touched M.O.'s penis until it is "'long and white stuff comes out.'" He forced M.O. to insert his penis into M.B.'s vagina. He also forced M.O. and M.B. to orally copulate each other and appellant. While they were performing sexual acts, appellant watched and touched himself. PGM was usually sleeping or getting fast food for them when the sexual abuse occurred; although his paternal grandfather (PGF) might have observed at least one incident, he had cancer and was afraid of appellant. M.O. explained that he had lied to Detective Garcia because he did not want to get appellant in trouble and be separated from his family.[2]

M.B. was initially avoidant, and Dr. Maltby interviewed her over three sessions to build rapport. M.B. disclosed that appellant would touch and lick her "'hot dog bun,'" the area where her urine came from. Appellant also made

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[1] The police department report dated October 7, 2016 was incorporated into the jurisdiction/disposition report later filed by DCFS. Despite M.O.'s recanted statements, he had also reported to the police detective – consistent with his statements to CSW Horton and the forensic psychologist Dr. Maltby – that appellant and Uncle sexually abused him and his sister by vaginal, anal and digital penetration, oral copulation, and fondling, and made them perform sexual acts on each other. The abuse had been ongoing for about four years, since M.O. was in first grade.

[2] According to the forensic report, M.O. also witnessed appellant sexually abuse M.B. by anal and vaginal penetration, and oral copulation.

M.O. put his penis in her "'hot dog bun,'" while appellant watched and touched himself. She described appellant's penis as "'pointing up,'" and with "a whole bunch of hair on it." Appellant made her lick M.O.'s penis. He also showed her "porn," which is "like a video where they do inappropriate stuff." Appellant would punch them in the back with his fist if they refused to do what he asked, and threatened to kill them and take them far away if they told anyone about the abuse. The abuse occurred when PGM went out to get fast food for them, and stopped when PGM returned home.[3]

Although Detective Garcia expressed doubt regarding M.B.'s testimony due to inconsistencies, language she used which did not seem age-appropriate, and her knowledge that pornography was illegal, Dr. Maltby was "adamant" that M.B. was telling the truth and requested that DCFS substantiate the allegations.

D. Follow-Up

On November 14, 2016, Garcia staged a phone call from M.O. to appellant regarding the sexual abuse allegations. Appellant angrily denied the allegations, cursed at M.O., and hung up the phone.

In a follow-up visit, Horton learned the children were being homeschooled and had been attending weekly sessions with a therapist, who diagnosed them with post-traumatic stress disorder (PTSD), noting M.O. was more severely affected than M.B.

Although Horton and Garcia attempted to contact appellant, he refused to speak to them.

III. Dr. Maltby's Forensic Report

The forensic report disclosed that concerns about the children's sexualized behavior first emerged as early as 2013 – when M.O. and M.B. were approximately seven and four years old, respectively – and persisted in

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[3] M.B. reported that both appellant and Uncle sexually abused her by fondling, digital penetration and oral copulation, but she did not mention any anal or vaginal penetration. M.B. also witnessed both appellant and Uncle sexually abuse M.O. by licking and fondling him, and by anal and digital penetration.

2015, when Brian observed M.O. leaving the bathroom, where M.B. was, while pulling his pants up.[4] The children continued to engage in sexual behaviors outside of appellant's presence because, in M.O.'s words, "'it's stuck in our head, and . . . I feel like it's normal. I can't really stop it. . . . It's always stuck in my head.'" M.O. also admitted that "'now [he and M.B. were] doing it to our little sister.'" Both children had normal ano-genital exams, but the report noted that "normal findings can neither confirm nor negate abuse."[5]

Emphasizing that the children were interviewed separately, Dr. Maltby concluded they had "significantly more consistencies in their accounts of sexual abuse by [appellant and Uncle] than they have differences." Both children had reported: (1) that the sexual abuse occurred in the bathroom of their grandparents' house, when PGM was out getting fast food; (2) that appellant forced them to engage in sexual acts with each other, including oral copulation and vaginal penetration, while he watched and masturbated; (3) that appellant threatened to kill them and take them far away, and punched them in the back if they did not comply; (4) that appellant anally penetrated M.O., after which they both observed blood in M.O.'s stool; and (5) that appellant forced them to engage in oral copulation with each other and with him.

Dr. Maltby noted some differences in the children's accounts. First, although M.B. reported witnessing Uncle sexually abuse M.O., M.O. had reported sexual abuse only by appellant. However, Dr. Maltby noted that M.O. had repeatedly used the pronoun "they" when referring to the abuse, and M.O. had initially reported sexual abuse by Uncle to Brian, Horton and

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[4] The forensic interviews with Dr. Maltby were video-recorded. CSW Horton and Detective Garcia were present to observe the interviews through a screen. The transcribed video recordings were later reviewed by the juvenile court for the adjudication hearing. Both minors referred to appellant as their "biological dad."

[5] During his interview with Dr. Maltby, 10 days after the forensic exam, M.O. reported that the last time appellant "put his pee in my poop" had been "[t]hree or four or five" weeks ago."

Garcia.[6] Second, M.O. had reported witnessing appellant vaginally and anally penetrate M.B., but M.B. did not report this during her interview. This may have been a function of "interview fatigue and/or interviewer error," since Dr. Maltby failed to clarify this point. Finally, M.B. had not observed any ejaculation, but M.O. had reported that appellant ejaculated, which may have been due to "their various positioning during sexual acts." Dr. Maltby explained that some differences from eyewitnesses to the same event may, in fact, indicate an "added level of credibility (e.g., it does not appear the children were coached to tell exactly the same story)."

IV. Juvenile Petition and Removal

On December 28, 2016, DCFS filed a petition on behalf of the minors pursuant to Welfare and Institutions Code section 300, subdivisions (a) (serious physical harm), (b)(1) (failure to protect), (d) (sexual abuse) and (j) (abuse of sibling).[7] The petition generally alleged:

> (1) *Physical Abuse* (§ 300, subds. (a) & (b)): Appellant physically abused the children by striking their back with his fist, placing them at risk of serious physical harm.
>
> (2) *Sexual Abuse* (§ 300, subds. (b), (d), (j)): Appellant sexually abused M.O. by sodomy, digital penetration, oral copulation, fondling M.O.'s penis, forcing M.O. to view pornographic material, and threatening him if he disclosed the sexual abuse. Appellant sexually abused M.B. since she was three years old by rape, sodomy, digital penetration, oral copulation, fondling M.B.'s vagina, forcing M.B. to view pornographic material, and threatening her if she disclosed the sexual abuse. Appellant

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[6] During his interview with Detective Garcia, M.O. had described being sexually abused by Uncle in the hallway after Uncle came out of the shower naked, consistent with his previous statements to Brian and Horton. Furthermore, during his forensic medical exam, M.O. had indicated to the examining nurse that Uncle sexually abused him.

[7] All further unspecified references are to the Welfare and Institutions Code.

sexually abused the children by forcing them to perform sexual acts on each other while he watched and masturbated, including sexual intercourse, oral copulation, and digital penetration. Mother knew or reasonably should have known of the ongoing sexual abuse and failed to protect M.O. and M.B., placing the child and sibling at risk of serious physical harm.

(3) *Detrimental Home Environment* (§ 300, subds. (b), (d), (j)): Appellant established a detrimental and endangering home environment for M.O. and M.B. because Uncle repeatedly sexually abused them by raping M.B., sodomizing M.O. and M.B., digitally penetrating M.O., fondling M.O.'s penis and M.B.'s vagina, orally copulating M.B. and forcing her to perform oral copulation, and licking M.B.'s tongue. Uncle threatened the children if they disclosed the sexual abuse. Appellant knew of Uncle's ongoing sexual abuse, and his status as a registered sex offender, when he allowed Uncle unlimited access to the children, failing to protect M.O. and M.B. and placing them at risk of serious physical harm.

On the same day, the juvenile court authorized a removal order detaining M.O. and M.B. from appellant and releasing them to Mother, finding the minors were described by section 300, subdivisions (a), (b), (d) and (j).

V. Jurisdiction/Disposition Report

The jurisdiction/disposition report, filed January 31, 2017, adopted the allegations from the juvenile petition and incorporated the detention report, the police department report, and the forensic report as supporting evidence. Further witness statements were obtained from the children, Mother, Brian, therapists, and Detective Garcia at the end of January 2017.

Both children said they felt safe and enjoyed therapy, but were reluctant to discuss specific acts of sexual abuse. M.O. expressed a persistent fear of what appellant would do now that M.O. had disclosed the sexual abuse to so many people. He experienced nightmares in which his lawyer, appellant, and appellant's friends were sexually abusing him, "'calling me a pussy and sticking their penis in my butt.'" In the "dream log" he maintained

for therapy, M.O. described pornographic videos appellant had shown him, including of "'a woman on a pole.'" Although M.O. and M.B. confirmed they had told the truth about appellant's sexual abuse, they now denied that Uncle sexually abused them. The children's therapist indicated both children presented "passive trauma symptoms such as avoidance and disassociation to such a degree, she believe[d] they are victims of sexual abuse" and had diagnosed them with PTSD.

Mother described appellant's history with drug and alcohol abuse, his mental health issues, and the domestic violence in their relationship. She explained appellant had a "'very explosive personality'" and, in the past, he had pushed her, broken windows, thrown things across the room, punched walls, destroyed property, put her in a choke hold, and threatened to kill her. Mother believed both grandparents were scared of appellant, but Mother had allowed the children to visit them after learning PGF was diagnosed with cancer. The children sometimes cried and M.O. "'hyperventilate[d]'" if they could not visit the grandparents; Mother had since learned that appellant had threatened to take them away and kill them if they discontinued their visits. Mother's therapist reported that Mother "'was very traumatized by the allegations and the fact that the perpetrators are not in jail.'"

Both Mother and Brian corroborated the children's statements supporting the charges of sexual abuse. M.O. had described to each of them one particularly traumatic incident at Target, when appellant took M.O. to the family restroom, strapped him to the baby changing table, and forcefully sodomized him, after which he had "'bloody diarrhea.'" M.O. had also described being sexually abused by Uncle after he came out of the shower, which Brian found "'completely believable.'" M.B. had reported to Mother and Brian that appellant raped her both vaginally and anally, digitally penetrated her, and forced her to perform oral sex. However, according to Mother, M.B. had gradually refused to discuss the abuse and seemed to "'block it out.'" The children elaborated on appellant's physical abuse, which included grabbing M.O. by the head and lifting him off the ground, hitting M.O. with a golf club, slamming M.B. against the wall, hitting M.B. with a stick, and picking her up by force and dragging her to the bathroom.

Detective Garcia believed the district attorney's office would not prosecute the case due to the lack of physical evidence, the lack of corroboration, M.O.'s recanted allegations and inconsistencies in his statements, and because it appeared to Garcia that the children had been coached and were influenced by each other's statements.

Appellant and PGM refused to be interviewed by DCFS.

VI. Adjudication Hearing

The adjudication hearing proceeded on June 20, July 18, July 21 and September 26, 2017. DCFS submitted transcribed videos of the children's forensic interviews with Dr. Maltby, the detention report and the jurisdiction/disposition report. The court also considered a Last Minute Information filed by DCFS after its consultation with a SART (Sexual Assault Response Team) program director, which explained that the lack of physical evidence of sexual abuse does not establish the abuse did not occur, because "'90% of all the exams conducted on children who report penetration are concluded as normal exams.'"[8] According to social workers, M.B. had been exhibiting "very inappropriate sexualized behavior," had poor boundaries, and showed physical aggression. She admitted that she "put her hand inside of her sister[']s] diaper and touched her private parts." M.O. continued to experience nightmares and flashbacks of the abuse. Both children had also experienced bullying and academic difficulties at school.

M.O. and M.B. testified in chambers. M.B. testified that appellant touched her "hot dog," made M.O. touch her "hot dog," and made her touch M.O.'s penis. The abuse usually occurred in the bathroom, after PGM asked what they wanted for dinner, and they replied they wanted pizza, which is when appellant would "know[] that my grandma is going to be gone, and my grandpa is going to be asleep." M.B. confirmed she had told Dr. Maltby the

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[8] According to the report, injury to a child's rectum will not always be visible: "Unless the tear is very large, it will heal and there will not be any scarring." Neither would signs of sexual abuse to a female child always be obvious: "the hymen is flexible. It can stretch if penetration is not violent. It can be[] very recessed and there can be penetration that does not go very deep."

truth when she reported that Uncle also abused her. M.B. recounted that Uncle would come out of the shower without clothes or a towel. Although she didn't like looking at his "nakedness" and wanted to scream, Uncle would cover her mouth. Appellant was usually home but smoking weed; M.B. described in detail how appellant smoked weed using a "glass thing," and got drunk with friends in the garage. Although M.B. tried to tell PGM about the abuse, PGM "didn't care because she would say, 'No, he didn't.'" Appellant would grab M.B. by the head and throw her against the wall if she did not do what he asked. Appellant also showed them porn until they fell asleep.

M.O. testified that only appellant had abused him. Appellant would put his "number one" in M.O.'s "number two" and also tell M.O. to "suck it." Appellant would also orally copulate M.O., and force M.O. and M.B. to perform sexual acts on each other. The abuse occurred in the bathroom. M.O. denied that Uncle ever touched him inappropriately, and denied knowing whether Uncle touched M.B. inappropriately. Appellant showed M.O. and M.B. porn, and touched himself and M.O. while watching it.

PGM testified that the children visited approximately twice per month, sometimes staying overnight. PGM claimed she was always there to supervise the children, and appellant never supervised them alone. Whenever she left to get food for the children, she was only gone for five to 10 minutes. PGM admitted Uncle was a registered sex offender, but claimed he was usually not home when the children visited. She accused the children of lying about the abuse.

On the final day of the adjudication hearing, the juvenile court issued its ruling sustaining all the allegations in the juvenile petition, and finding the children described by section 300. The court stated:

> "The court has read and considered the evidence admitted, the testimony from the parties and the arguments. The court has reviewed all of the written evidence of the Department's and also has reviewed the videos and transcripts of the children's interviews. The court also heard and observed the testimony of the children in chambers. The court does believe that the testimony of the children was credible. They were able to determine the difference between a truth and a lie and promised

> to tell the truth. From listening to their testimony, the court does not believe that they have been coached."

The court further noted it had taken Detective Garcia's notes into account in weighing the preponderance of the evidence. The court agreed with Dr. Maltby's conclusion that there were more consistencies in the children's accounts of sexual abuse than there were differences. As to the allegations that appellant created a dangerous home environment by allowing Uncle to sexually abuse the children, the court found DCFS had met its prima facie burden under section 300, subdivisions (b) and (d) by establishing Uncle was a registered sex offender, and there was "no evidence submitted to rebut" that.

VII. Notice of Appeal and Dispositional Hearing

On September 26, 2017, the final day of the adjudication hearing, appellant filed a premature notice of appeal challenging the jurisdictional findings.[9] In a subsequent dispositional hearing on October 20, 2017, the juvenile court declared M.O. and M.B. dependent minors of the juvenile court under section 300. The children were removed from appellant and released to Mother's home under DCFS supervision. At the judicial review hearing six months later, the court awarded Mother sole legal and physical custody,

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[9] Appellant's notice of appeal indicates he is appealing the September 26, 2017 jurisdictional order. An appeal cannot be taken directly from a dependency court's jurisdictional order, but the jurisdictional order is "'appealable by way of a challenge to a dispositional order made subsequent to it.' [Citation.]" (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1490, fn. 4; see *In re Mario C.* (2004) 124 Cal.App.4th 1303, 1307 ["the 'judgment' in a juvenile court proceeding is the order made after the trial court has found facts establishing juvenile court jurisdiction and has conducted a hearing into the proper disposition to be made"].) We treat appellant's notice of appeal as being from the dispositional order rendered in October 2017. (§ 800, subd. (a); Cal. Rules of Court, rule 8.406(d) ["[a] notice of appeal is premature if filed before the judgment is rendered or the order is made, but the reviewing court may treat the notice as filed immediately after the rendition of judgment or the making of the order"].)

denying appellant visitation. The custody order and final judgment terminated jurisdiction over the children under section 300.

DISCUSSION

I. Appellant's Jurisdictional Appeal Should Not Be Dismissed on Justiciability Grounds.

"It is a fundamental principle of appellate practice that an appeal will not be entertained unless it presents a justiciable issue." (*In re I.A.*, *supra*, 201 Cal.App.4th at p. 1489.) When "issues raised in [an] appeal present no genuine challenge to the court's assumption of dependency jurisdiction[,] . . . any order we enter will have no practical impact on the pending dependency proceeding, thereby precluding a grant of effective relief. For that reason, we find [such an] appeal to be nonjusticiable." (*Id.* at p. 1491.) "'When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.' [Citation.]" (*In re I.J.* (2013) 56 Cal.4th 766, 773.)

There is a discretionary exception to the justiciability doctrine in dependency cases. "[W]e generally will exercise our discretion and reach the merits of a challenge to any jurisdictional finding when the finding (1) serves as the basis for dispositional orders that are also challenged on appeal [citation]; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings [citations]; or (3) 'could have other consequences for [the appellant], beyond jurisdiction' [citation]." (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763.) Respondent argues that appellant's case should be dismissed as nonjusticiable because there is no genuine challenge to jurisdiction. Although appellant contends there is no substantial evidence to support the charges that appellant and Uncle sexually abused the children, the juvenile court's finding that appellant knowingly exposed the children to Uncle – a registered sex offender –

independently supports jurisdiction under subdivisions (b) and (d).[10] Nevertheless, in light of the seriousness of the charged offenses and their potential prejudice to appellant, we exercise our discretion to review appellant's claims on the merits.

II. Substantial Evidence Supports the Jurisdictional Findings.

A. Standard of Review and Applicable Law

DCFS has the burden of proving by a preponderance of the evidence that the children were described by section 300. (*In re I.J.*, *supra*, 56 Cal.4th at p. 773; §§ 355, subd. (a), 342.) Appellant argues DCFS failed to carry this burden on the subdivision (a) and (d) counts; specifically, that no substantial evidence supported the finding that the children were physically or sexually abused by appellant or Uncle. Thus, appellant argues, the subdivision (b) and (j) counts also necessarily fail.

We review the juvenile court's jurisdictional findings for substantial evidence. (*In re I.J.*, *supra*, 56 Cal.4th at p. 773.) "'" In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court." [Citation.] "We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court. [Citations.]"'" (*Ibid.*)

Appellant's main challenge is to the sexual abuse findings under section 300, subdivisions (d). Jurisdiction arises under subdivision (d) where "[t]he child has been sexually abused, or there is a substantial risk that the

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[10] Section 355.1 provides that where a court finds that either a parent, guardian, "or any other person who resides with" a minor who is the subject of a section 300 petition is required, as a result of a felony conviction, to register as a sex offender, "that finding shall be prima facie evidence in any proceeding that the subject minor is a person described by subdivision (a), (b), (c), or (d) of Section 300 and is at substantial risk of abuse of neglect." (§ 355.1, subd. (d).) As DCFS established and appellant did not dispute, Uncle resided with minors during their visits, had a felony conviction and was a registered sex offender.

child will be sexually abused, as defined in Section 11165.1 of the Penal Code, by his or her parent or guardian or a member of his or her household . . . ."[11] (§ 300, subd. (d).) Penal Code section 11165.1 defines "sexual abuse" to include both sexual assault (rape, sodomy, oral copulation, and lewd or lascivious acts upon a child) and sexual exploitation.

B. Appellant's Sexual Abuse

The evidence establishing appellant's sexual abuse of the children is considerable. The children described appellant's egregious sexual abuse multiple times – to Mother and Brian, to CSW Horton, to Detective Garcia, to Dr. Maltby, to the forensic examining nurse, to their therapist, to their attorneys, to other DCFS social workers, and to the juvenile court. Though the circumstances of each account differed, on the whole, each child consistently reported in graphic detail specific instances of appellant's aberrant sexual abuse. M.O. described being sodomized by appellant, and being forced to engage in oral copulation with him. M.B. described being raped and sodomized by appellant, and also being forced to engage in oral copulation. Both children reported that appellant forced them to engage in sexual acts with each other, while appellant watched and masturbated. The social workers, forensic psychologist, and therapist responsible for investigating and treating the abuse found the children credible and observed symptoms of prolonged sexual trauma.

The similarities in the children's accounts are notable. Both children stated the abuse occurred primarily in a bathroom at the grandparents'

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[11] A finding that a parent sexually abused a child also invokes jurisdiction under section 300, subdivision (b)(1), where "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child." (§ 300, subd. (b)(1); see *In re Kieshia E.* (1993) 6 Cal.4th 68, 76-77 [parent's sexual abuse of child sufficient to find child at risk of serious physical harm].) Jurisdiction also arises under section 300, subdivision (j) where "[t]he child's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions." (§ 300, subd. (j).)

house, while PGM was out getting fast food, and PGF was sleeping or watching TV. Both children expressed a fear of appellant, who would physically punish or threaten them if they did not perform the requested acts. Specifically, he would punch them in the back with a fist and threaten to kill them and separate them from their family. Both children reported, at some point, that they had witnessed the other being sexually abused. M.B. had even observed the bloody stool that M.O. reported experiencing as a result of the abuse. Both children indicated that appellant exposed them to pornography, which they recognized as inappropriate and could recall in detail. Both children described being sexually abused by Uncle after he came out of the shower naked. Lastly, both children were diagnosed with PTSD and manifested alarming sexualized behaviors not usually observed in children their age, including molestation of their younger sister with acts they had been conditioned to perform for appellant. On this record, it was reasonable for the juvenile court to conclude that appellant sexually abused the children. (See *In re Hadley B.* (2007) 148 Cal.App.4th 1041, 1050 ["Facts supporting allegations that a child is one described by section 300 are cumulative."].)

The juvenile court recognized discrepancies in the children's reports of sexual abuse and acknowledged Detective Garcia's doubts, but still found the children credible and determined the sexual abuse had occurred. In dependency cases, inconsistencies and discrepancies in victim accounts of abuse are not uncommon and do not render the alleged abuse inherently incredible. (See *In re Rubisela E.* (2000) 85 Cal.App.4th 177, 195 [rejecting father's argument that "inconsistencies in [child's] retelling of the incident to various investigators . . . compel a conclusion that her testimony and the evidence as a whole does not support a finding" of sexual abuse child alleged], disapproved on another ground by *In re I.J.*, *supra*, 56 Cal.4th 766.) Furthermore, the testimony of a single witness is sufficient to uphold a judgment. (*In re S.A.* (2010) 182 Cal.App.4th 1128, 1148.) Although M.O. had initially reported that multiple people sexually abused him, the court credited his testimony that he lied out of fear that incriminating appellant would result in harm to him or his family. Although M.B. was inconsistent regarding appellant's specific acts of abuse, and both children at one point

denied that Uncle had abused them, the court found substantial evidence of their sexual abuse based on witness statements of what the children reported, the children's statements of what they observed happened to the other, and the children's other allegations of significant sexual abuse which remained consistent. The juvenile court indicated it had read and carefully considered all the evidence, including DFCS reports, videotaped recordings of the forensic interviews, and the children's testimony in chambers before reaching its conclusion.

"'If a trier of fact has believed the testimony . . . this court cannot substitute its evaluation of the credibility of the witness unless there is either a physical impossibility that the testimony is true or that the falsity is apparent without resorting to inferences or deductions. [Citations.]'" (*In re Andrew I.* (1991) 230 Cal.App.3d 572, 578.) Appellant does not establish that the alleged acts of sexual abuse were physically impossible, but relies on improper inferences and deductions to attempt to prove their falsity. Although appellant cites an online medical source to support his argument that M.O.'s claim of ejaculation was physically impossible, the website does not discuss ejaculation, and explains only that puberty before the age of nine in boys is considered precocious.[12] However, M.O. stated the abuse was ongoing until he was 10, and was vague as to how old he was when the ejaculation occurred. None of appellant's other arguments challenging the juvenile court's findings are persuasive. We do not find the lack of physical evidence dispositive. Nor are we convinced the children's use of adult language such as "biological dad," "rape" and "inappropriate" irreparably taints their credibility or demonstrates improper coaching and influence from Mother. Finally, it is not our function to engage in such an inquiry. It is the trial court's role to assess the credibility of witnesses, and to weigh the evidence in resolving conflicts. (*In re E.B.* (2010) 184 Cal.App.4th 568, 578.) We draw all reasonable inferences and deductions in support of the juvenile court's findings. (*In re I.J.*, *supra*, 56 Cal.4th at p. 773.) Here, substantial evidence supports the court's findings that appellant sexually abused M.O. and M.B., and knowingly exposed them to Uncle's sexual abuse.

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[12] See https://www.mayoclinic.org/diseases-conditions/precocious-puberty/symptoms-causes/syc-20351811.

C. Appellant's Physical Abuse

The juvenile court's finding of physical abuse is also supported by substantial evidence. Jurisdiction arises under section 300, subdivision (a) where "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian." (§ 300, subd. (a).) The juvenile court properly concluded that ample evidence supported appellant's physical abuse, including the children's statements that appellant threatened to kill them and inflicted physical punishment if they refused to perform sexual acts, and Mother's description of appellant's domestic violence during their relationship.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

MANELLA, P. J.

We concur:

COLLINS, J.

CURREY, J.